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ATTORNEY GENERAL OF WASHINGTON

Natural Resources Division
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January 7, 2015

Christopher R. Neil
Neil & Neil, P.S.
5302 Pacific Avenue
Tacoma, WA 98408

RE: *In re Sesko*
Kitsap County Superior Court No. 04-4-00770-3

Dear Mr. Neil:

Thank you for speaking with me last month regarding DNR's claim in the above-captioned matter. Pursuant to your request, DNR provides the following information on its claim. As you are aware, DNR's claim pertains to its efforts to clean up the state-owned harbor area adjacent to the Sesko's 1701 Pennsylvania Avenue property in Bremerton. Because Mr. Sesko was occupying the harbor area without authorization from DNR as part of his illegal junkyard at the Pennsylvania Avenue site, Mr. Sesko's estate is liable for DNR's restoration costs and other trespass damages under RCW 79.02.300.

I have enclosed a survey exhibit produced by DNR that shows the boundaries of the state-owned harbor area relative to the Sesko's Pennsylvania Avenue property (Exhibit 1). As you can see from the exhibit, the inner harbor line is upland of the line of mean high tide in all but a small area of the property. As a result, the boats, pontoons, and other materials Mr. Sesko placed in the beach area fronting the property were on state-owned lands. As shown in the exhibit, all the beach area in the vicinity of the property is within the harbor area and owned by the State. Accordingly, even if Mr. Sesko's items have drifted or were moved to another part of the beach in the area, they would remain on state-owned lands.

A relatively good discussion of Mr. Sesko's use of the Pennsylvania Avenue property as an illegal junkyard can be found in *City of Bremerton v. Sesko*, 100 Wn. App. 158, 160, 995 P.2d 1257, review denied, 141 Wn.2d 1031 (2000). As the enclosed correspondence from the City of Bremerton, declaration of Bremerton Code Enforcement Officer Janet Lunceford, and photographs show, many of the items listed in the case were located in the state-owned harbor

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area, including the old boats, rusty barge, pontoons, rusty breakwater float, and crane (Exhibit 2). On March 11, 2005, Global Diving & Salvage ("Global") provided DNR with an estimate that it would cost \$106,175.63 to remove all of the items in the harbor area (Exhibit 2).

The list of items in *City of Bremerton v. Sesko* is derived from the May 18, 1998, Kitsap County Superior Court judgment issuing an injunction and requiring Mr. Sesko to clean up the items from the Pennsylvania Avenue property. A copy of the judgment is recorded under Kitsap County Auditor File Number 200110020401 and may be viewed on the County's web site. Mr. Sesko failed to comply with the order. As a result, in June 2005, DNR removed and disposed of three of the vessels Mr. Sesko left in the harbor area. Two of the vessels were refloated at high tide and towed to Lions Park for removal. The third vessel could not be refloated and, accordingly, was dismantled in place. DNR incurred \$32,099.03 in costs removing and disposing of the three vessels. A copy of the scope of work for the vessel removal project, the invoice for the work from DNR's contractor Global, and DNR's staff time expenditure report for the project is enclosed (Exhibit 3).

DNR did not undertake removal of Mr. Sesko's two large pontoons as part of its June 2005 vessel removal effort. However, DNR has obtained an estimate of the cost of disposing of the pontoons. As of January 2010, Global estimated that the cost of lifting the tanks by crane onto a barge for tow to Seattle Iron & Metal to be scrapped would be approximately \$47,195.70, plus tax. Global also estimated that the cost of towing the pontoons directly, without placing them on a barge, would be less (approximately \$14,000.00). Because the pontoons are cylindrical and may not be seaworthy, however, Global's estimate concludes that they would "make for a very challenging and iffy tow" (Exhibit 4). Accordingly, DNR does not believe that towing the pontoons directly is a reasonable option.

Although Mr. Sesko used the harbor area fronting the Pennsylvania property for many years as part of his illegal junkyard, Mr. Sesko never obtained authorization from DNR. Accordingly, Mr. Sesko is liable to the State for trespass damages, including restoration costs and the market value of his use of the harbor area under RCW 79.02.300. For purposes of calculating the market value of Mr. Sesko's use of the harbor area, DNR determined that Mr. Sesko occupied .344 acres of harbor area with his boats, pontoons, and other materials. Pursuant to DNR's authority to charge rent in RCW 79.105.240, DNR then determined that between 1999 and 2004 Mr. Sesko would have paid \$8,297.66 in rent, including leasehold excise tax, had his use been authorized as required. A copy of DNR's water-dependent rent calculation sheet and supporting documents is provided as Exhibit 5.

Based on the foregoing, DNR claims trespass damages of \$32,099.03 for restoration costs incurred in removing vessels from the Sesko property in 2005, and \$8,297.66 for the market value of Mr. Sesko's unauthorized use of the harbor area as authorized under RCW 79.02.300. In addition, DNR claims the reasonable cost of removing and disposing of the pontoons, which, as of January 2010, was approximately \$47,195.70.

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DNR looks forward to working with you to resolve this long-standing issue. Please do not hesitate to contact me with any questions that you may have regarding the foregoing.

Sincerely,



TERENCE A. PRUIT

Assistant Attorney General

Natural Resources Division

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TAP:kk

Enclosures

cc: Melissa Ferris, Derelict Vessel Program Manager, DNR (w/o encs.)
Lindie Schmidt, Land Manager, Shoreline District, DNR (w/o encs.)